

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:

**VICTOR FOWLER AND
TONYA FOWLER,**

BANKRUPTCY CASE NO.: 10-80770

Soc. Sec. Nos. xxx-xx-5973 & xxx-xx-9043
Mailing Address: 2615 Beavertail Dr, Hillsborough,
NC 27278-

Debtors.

**VICTOR FOWLER AND
TONYA FOWLER,**

A.P. NO.: _____

Plaintiffs,

AMERICAN GENERAL FINANCE,

Defendant.

COMPLAINT TO VALUE COLLATERAL

The Plaintiffs, above-named, respectfully allege as follows:

1. That this matter is a core proceeding pursuant to 28 U.S.C. § 157, and that the court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157 and 1334.
2. This Complaint was filed, pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c), and in accordance with Bankruptcy Rule 7001, to value their residence for the purpose of determining the secured status of the mortgage claim held by AMERICAN GENERAL FINANCE.
3. The Plaintiffs are filed this bankruptcy case on April 30, 2010, seeking protection under Chapter 13 of Title 11 of the United States Code.
4. The Defendant AMERICAN GENERAL FINANCE is a corporation and/or a partnership with an office and principal place of business located at 3808 Guess Road, Suite D, Durham, NC 27705-1550. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c).
5. The Plaintiffs own real property located at 2615 Beavertail Drive, Hillsborough NC 27278. The legal description of the property is as follows:

Beginning at an iron stake in the centerline of Beavertail Drive (Private Road), and in the northeast corner of Lot 9A and South line of Lot 4; thence with the centerline of said Beavertail Drive and Lots 4 and 5, North 76° 40' 23" East 200.00 feet to an iron stake in the Southwest corner of Lot 6 and northwest corner of Lot 7A; thence with Lot 7A South 14 °

37' 18" East 460.84 feet to an iron stake in the northeast corner of Lot 8B; thence with Lot 8B South 84° 03' 51" West 7.69 feet and South 80° 22' 03" West 189.40 feet and South 76° 02' 38" West 44.26 feet to an iron stake; thence with Lot 9A North 8 42' 54" West 402.29 feet to the place and point of BEGINNING, containing 2.02 acres and being Lot 8A, according to plat of survey recorded in Plat Book 41, Pages 37-38, Orange County Registry, entitled "Revision of Lots 7,8,9 of FORRESTER BEND".

The tax map or parcel ID No. is: 9886080194

6. Wells Fargo Bank, NA holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$82,483.45, as indicated on the proof of claim filed on June 17, 2010. This Deed of Trust was recorded on March 5, 2006, in Book 3981 at Page 508, Orange County Registry of Deeds.
7. AMERICAN GENERAL FINANCE holds a second Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$13,988.29. This Deed of Trust was recorded on September 21, 2006, in Book 41227 at Page 231, Orange County Registry of Deeds.
8. The fair market value of the said property is not greater than \$80,000.00.
9. Pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c) of the Bankruptcy Code and In re: Kidd, 161 B.R. 769 (Bankr. E.D.N.C. 1993), the loan with AMERICAN GENERAL FINANCE, secured by a second Deed of Trust against the Plaintiffs' said property, is an unsecured claim. In turn, pursuant to 11 U.S.C. § 506(d), the lien securing said loan is void.
10. The Deed of Trust held and/or serviced by the Defendant takes an additional security interest in, among other personal property, the Plaintiffs' escrow account.
11. Pursuant to In re Bradsher, 2010 WL 545967 (Bankr. M.D.N.C. February 16, 2010), such additional collateral renders 11 U.S.C. § 1322(b)(2) inapplicable.

WHEREFORE, the Plaintiffs pray the Court find that said claim held by AMERICAN GENERAL FINANCE, which is secured by a second Deed of Trust upon said property, to be wholly unsecured, and that said claim should therefore be classified an unsecured claim for the purpose of this Chapter 13 case. The Plaintiffs further pray that the Court order AMERICAN GENERAL FINANCE to cancel the said Deed of Trust forthwith upon the completion of the Plaintiffs' Chapter 13 plan and the granting of the Plaintiffs' discharge, and that the Court grant such other and further relief as to the Court seems just and proper.

Dated: September 19, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz

Edward Boltz

Attorney for the Plaintiffs

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